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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,863	02/24/2004	Johan van de Groenendaal	063170.6774 (20000213-CON)	3676
5073	7590	09/17/2008	EXAMINER	
BAKER BOTTS L.L.P. 2001 ROSS AVENUE SUITE 600 DALLAS, TX 75201-2980			PHAM, MICHAEL	
			ART UNIT	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/786,863	GROENENDAAL ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	MICHAEL PHAM	2167	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 10/16/07-06/9/08.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-20 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ .  | 6) <input type="checkbox"/> Other: _____ .                        |

## **DETAILED ACTION**

### *Claim Status*

1. Claims 1-20 are pending
2. Claims 1-20 have been examined.

### *Specification*

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: computer-readable medium and program storage device is not in the specification.

### *Claim Objections*

4. Claims 1, 3, 9, and 16 are objected to because of the following informalities: Claims 1 and 9 all recite several instances of the phrase "operable to" which suggests or makes optional but does not require the steps to be performed or does not limit a claim to a particular structure. See MPEP 2111.04. Limitations, as is, are not being positively claimed, and further the "operable to" clause as used in the claims does not constitute a condition because it is directed to an intended use. Therefore, because the claim is not limited it is not in proper form and therefore according to MPEP 706.1 qualifies as an objection. The examiner respectfully suggests replacing the phrase with the terms "configured to".

5. Claims 12, 13 and 14 are objected to under 37 CFR 1.75(c) as being in improper dependent form because the claim fails the Infringement Test. See MPEP § 608.01(n)III.

Under the terms of the Infringement Test, the test for a proper dependent claim is that the dependent claim "shall not conceivably be infringed by anything which would not also infringe the basic claim."

Dependent claims 13 and 14 fail this test, because it is conceivable that a recording media, such as a CD-ROM, containing a computer program, could infringe dependent claims 13, and 14 ("A program storage device..."; and "A computer data signal including one or more segments embodied in a computer-readable medium..."; ) without infringing base claim 11 ("A method for network management..."). Until the computer program is installed in a computer and executed, the claimed computer program product does not constitute the method of claim 11, and so a CD-ROM containing a computer program could infringe dependent claims 13 and 14 without infringing base claim 11.

Dependent claim 12 fails this test, because it is conceivable that a computer system, such as a laptop, containing a computer program, could infringe dependent claim 12 ("a computer system"; ) without infringing base claim 11 ("A method for network management..."). Until the computer program is installed in a computer and executed, the claimed computer system does not constitute the method of claim 11, and so a laptop containing a computer program could infringe dependent claim 12 without infringing base claim 11.

This being the case, claim 12, 13, and 14 fail the Infringement Test, and are thus improper dependent claims.

Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

6. Claim 1 is objected to because of the following informalities: Claim 1 recites that it is an apparatus, however software stored on medium is a manufacture, not an apparatus. Appropriate correction is required.

***Claim Rejections - 35 USC § 101***

7. Prior 101 rejections are withdrawn.

8. Regarding claims 1, 9, 10, and 14, these claims recite a computer readable medium. In the absence of any modifying disclosure of this limitation in the specification, the examiner interprets the terms 'computer readable medium' as excluding printed paper, transmission media, signals, or any form of energy, such that the claim clearly falls within a statutory class of invention as required under the terms of 35 U.S.C. 101.

9. Regarding, claim 13, this claim recite a program storage device. In the absence of any modifying disclosure of this limitation in the specification, the examiner interprets the term 'program storage device' as excluding printed paper, transmission media, signals, or any form of energy, such that the claim clearly falls within a statutory class of invention as required under the terms of 35 U.S.C. 101.

10. Regarding claim 12, this claim recites a “processor” and “program storage device”. In the absence of any modifying disclosure of this limitation in the specification, the examiner interprets the term ‘processor’ as limited to hardware embodiments; and the term ‘program storage device’ as excluding printed paper, transmission media, signals, or any form of energy, such that the claim clearly falls within a statutory class of invention as required under the terms of 35 U.S.C. 101.

***Claim Rejections - 35 USC § 102***

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

13. **Claims 1-20 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 6122639 by Babu et. al. (hereafter Babu).**

**Claim 1 :**

Babu discloses the following claimed limitations:

“a relational interface embodied in a computer-readable medium and operable to receive a relational query from a software application requesting network management information from a specified network device;”[ See figure 1, col. 7 lines 24, 27-28, and 29. Accordingly, a relational interface embodied in a computer-readable medium (figure 1, element 102) and operable to receive a relational query (collection request, col. 7 line 29) from a software application (application program, col. 7 line 24) requesting network management information (col. 7 line 27-28, collect data from particular network device) from a specified network device (col. 7 line 28, particular network device)]

“a relational mapper embodied in a computer-readable medium and operable to translate the relational query received through the relational interface from the software application, to native protocol messages according to an access protocol associated with the network device; and”[See figure 1, figure 2, col. 7 line 24, 27-28, 31-32, and col. 1 line 23. Accordingly, a relational mapper embodied in a computer-readable medium (figure 1 element 102) and operable to translate (figure 2, states 1-3) the relational query (collection request, col. 7 line 27-28) received through the relational interface (figure 1 element 102) from the software application (application program col. 7 line 24), to native protocol messages (col. 1 line 23, agent sends message) according to an access protocol (col. 7 line 31-32, snmp message over the network to the network device 118) associated with the network device (figure 1 element 118, network device)]

“a protocol transaction handler embodied in a computer-readable medium and operable to handle the native protocol messages as a transaction with the network device, and return a result of the transaction to the software application.”[ See figure 1, col. 3 lines 31-32, 33-36, and figure

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3. Accordingly, a protocol transaction handler embodied in a computer-readable medium (figure 1 element 116) and operable to handle the native protocol messages (SNMP query, col. 3 lines 31-32) as a transaction with the network device (figure 3 and col. 3 lines 33-36, discovering and checking a device), and return a result of the transaction to the software application (figure 1 element 124).]

**Claim 2 :**

Babu discloses “The apparatus of claim 1, wherein the relational mapper includes a relational model of the network device” [figure 1 element 40].

**Claim 3 :**

Babu discloses “The apparatus of claim 1, wherein the relational mapper is operable to translate a query to plural messages corresponding to plural access protocols “[figure 2].

**Claim 4 :**

Babu discloses “The apparatus of claim 1, wherein the relational mapper is expandable to receive queries directed to additional network devices which use other protocols different from said access protocol, transparent to said software application.” [figure 1 element 108]

**Claim 5 :**

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Babu discloses “The apparatus of claim 1, wherein the collection of information of the network device is viewed as a relational database.” [figure 1 element 40]

**Claim 6 :**

Babu discloses “The apparatus of claim 1, wherein the relational query is independent of management and/or access protocols.” [col. 7 line 30]

**Claim 7 :**

Babu discloses “The apparatus of claim 1, wherein the translation of the relational query to native protocol messages is an abstraction transparent to said software application.” [figure 2 states 1-3]

**Claim 8 :**

Babu discloses “The apparatus of claim 1, wherein a form of the relational query does not depend on the access protocol to which the relational query is to be translated.”[col. 7 line 30]

**Claim 9 :**

Babu discloses the following claimed limitations: “A relational modeler embodied in a computer-readable medium” (figure 1) “and operable to translate” (figure 2 states 1-3) “a relational query” (col. 7 line 30, collection request) “from a software application” (col. 7 lines 27-28, application program) “requesting network management information” (col. 7 lines 27, collect data) from a

specified network device (col. 7 line 28, network device) “, to native protocol messages” (col. 7 lines 36, SNMP) “according to an access protocol” (col. 7 line 30, SNMP) “associated with the network device” (col. 7 line 32, network device), “wherein said native protocol messages” (col. 7 line 36, SNMP) “is handled as a transaction with the network device” (figure 1 element 118, network device).

**Claim 10 :**

Babu discloses the following claimed limitations:

“a first segment including relational interface code to receive a relational query from a software application requesting network management information from a specified network device;”[ See figure 1, col. 7 lines 24, 27-28, and 29. Accordingly, a first segment including relational interface (figure 1 element 104) code to receive a relational query (collection request) from a software application (application program) requesting network management information (collection data) from a specified network device (particular device)]

“a second segment including relational mapper code to translate the relational query received from the software application, to native protocol messages according to an access protocol associated with the network device; and”[ See figure 1, figure 2, col. 7 line 24, 27-28, 31-32, and col. 1 line 23. Accordingly, a second segment including relational mapper (figure 1 element 102) code to translate (figure 2 states 1-3) the relational query (collection request) received from the software application (application program), to native protocol messages (SNMP) according to an access protocol (SNMP) associated with the network device (network device)]

“a third segment including protocol transaction handler code to handle the native protocol messages as a transaction with the network device, and return a result of the transaction to the software application.”[ See figure 1, col. 3 lines 31-32, 33-36, and figure 3. Accordingly, a third segment including protocol transaction handler (figure 1 element 116) code to handle the native protocol messages (SNMP) as a transaction with the network device (network device), and return a result of the transaction to the software application (network information report)]

**Claim 11 :**

Babu discloses the following claimed limitations:

“receiving a relational query from a software application requesting network management information from a specified network device;”[ See figure 1, col. 7 lines 24, 27-28, and 29. Accordingly, receiving a relational query (collection request) from a software application (application program) requesting network management information (collect data from a particular network device) from a specified network device (particular network device)]

“translating the relational query received from the software application, to native protocol messages according to an access protocol associated with the network device; and”[ See figure 1, figure 2, col. 7 line 24, 27-28, 31-32, and col. 1 line 23. Accordingly, translating (figure 2 states 1-3) the relational query (collection request) received from the software application (application program), to native protocol messages (SNMP) according to an access protocol (SNMP) associated with the network device (network device)]

“handling the native protocol messages as a transaction with the network device and returning a result of the transaction to the software application.”[ See figure 1, col. 3 lines 31-32,

33-36, and figure 3. Accordingly, handling the native protocol messages (SNMP) as a transaction with the network device (network device) and returning a result of the transaction to the software application (network information report)]

**Claim 12 :**

Babu discloses “a computer system, comprising: a processor; and a program storage device readable by the computer system, tangibly embodying a program of instructions executable by the processor to perform the method claimed in claim 11.” [figure 5]

**Claim 13 :**

Babu discloses “a program storage device readable by a machine, tangibly embodying a program of instructions executable by the machine to perform the method claimed in claim 11.”[figure 5]

**Claim 14 :**

Babu discloses “a computer data signal including one or more segments-embodied in a computer-readable medium which embodies instructions executable by a computer to perform the method claimed in claim 11.” [figure 5]

**Claim 15 :**

Babu discloses “the apparatus of claim 1, wherein the access protocol associated with the network device is selected from a group consisting of: Simple Network Management Protocol; Common Management Information Protocol; Command Line Interface;

Hypertext Transfer Protocol; Structured Query Language; and Simple Object Access Protocol.”

[col. 1 lines 26, SNMP]

**Claim 16 :**

Babu discloses “the apparatus of claim 1, further comprising the relational mapper operable to translate the relational query, in the form of Structured Query Language, received through the relational interface from the software application, to native protocol messages according to an access protocol, in the form of Simple Network Management Protocol, associated with the network device.” [figure 2 states 1-3 and figure 1]

**Claim 17 :**

Babu discloses “The computer data signal of claim 10, wherein the access protocol associated with the network device is selected from a group consisting of: Simple Network Management Protocol; Common Management Information Protocol; Command Line Interface; Hypertext Transfer Protocol; Structured Query Language; and Simple Object Access Protocol.” [col. 1 lines 26, SNMP]

**Claim 18 :**

Babu discloses “the computer data signal of claim 10, further comprising the second segment including relational mapper code to translate the relational query, in the form of Structured Query Language, received from the software application, to native protocol messages according

to an access protocol, in the form of Simple Network Management Protocol, associated with the network device.” [figure 2 states 1-3 and figure 1]

**Claim 19 :**

Babu discloses “the method of claim 11, wherein the access protocol associated with the network device is selected from a group consisting of: Simple Network Management Protocol; Common Management Information Protocol; Command Line Interface; Hypertext Transfer Protocol; Structured Query Language; and Simple Object Access Protocol.” [col. 1 lines 26, SNMP]

**Claim 20 :**

Babu discloses “the method of claim 11, wherein translating the relational query received from the software application, to native protocol messages according to an access protocol associated with the network device comprises translating the relational query, in the form of Structured Query Language, received from the software application, to native protocol messages according to an access protocol, in the form of Simple Network Management Protocol, associated with the network device.” [figure 2 states 1-3 and figure 1]

***Response to Arguments***

14. Applicant's arguments filed 6/9/2008 have been fully considered but they are not persuasive. Applicant's assert the following in regards to the Babu reference.

A. Applicant's assert that Babu does not disclose "the protocol transaction handler operable to handle the native protocol messages as a transaction with the network device, and return a result of the transaction to the software application."

The examiner disagrees. See figure 1, col. 3 lines 31-32, 33-36, and figure 3.

Accordingly, disclosing a protocol transaction handler embodied in a computer-readable medium (figure 1 element 116) and operable to handle the native protocol messages (SNMP query, col. 3 lines 31-32) as a transaction with the network device (figure 3 and col. 3 lines 33-36, discovering and checking a device), and return a result of the transaction to the software application (figure 1 element 124).

### ***Conclusion***

15. The prior art made of record listed on pto-892 and not relied, if any, upon is considered pertinent to applicant's disclosure.

16. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

***Contact Information***

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL PHAM whose telephone number is (571)272-3924. The examiner can normally be reached on 9am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Cottingham can be reached on 571-272-7079. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. P./  
Examiner, Art Unit 2167

/Luke S. Wassum/  
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